THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

W.P.No.24398 of 2002

Dated:25-07-2007

Between:-

Budda Narimani

..Petitioner

And

The Dist. Central Co-operative Bank,
Rep., by its General Manager, NH 5 Road,
Marripalem, VUDA Layout, Visakhapatnam and four others.

..Respondents.

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:O R D E R:

This writ petition is filed for a writ of Mandamus to declare the action of the respondents in issuing public auction notice CEP No. 2276/01 for an extent of Ac. 08-55 cents of dry land situate in Boyalakinthada village, Devarapally mandal, Visakhapatnam district as arbitrary and illegal and to set aside the said public auction notice.

The petitioner claims to have entered into two agreements of sale dated 31-07-1996 and 17-12-1996 with one Ganni Venkateshwar Rao, the husband of the fifth respondent and another. The extents of Ac.0-70 and Acs. 07-75 cents of dry land situate in survey Nos. 63/2c and 63/1c, 3b, 3c and 4c respectively were agreed to be sold in favour of the petitioner. The petitioner filed O.S.No.18 of 2001 on the file of learned Senior Civil Judge, Chodavarfam seeking a direction for execution of registered sale deeds. The petitioner obtained an *ex-parte* decree on 02-11-2001 and in pursuance of the execution proceedings, a sale deed was registered in favour of the petitioner on 24-10-2002.

In order to recover certain amounts borrowed by the husband of the fifth respondent, the property was sought to be auctioned under a sale notification dated 11-08-2002 issued by the fourth respondent. The petitioner then filed W.P.No.14746 of 2002, which was subsequently withdrawn in view of the fact that the public auction was postponed. When the fourth respondent issued another auction notice on 10-12-2002, the petitioner filed the present writ petition for the

aforementioned relief.

The General Manager of the first respondent-Bank filed a counter affidavit on behalf of the first and second respondents. It is averred in the counter affidavit that the husband of the fifth respondent borrowed a sum of Rs. 3,75,000-00 for expansion of his rice business unit from the first respondent-bank after depositing the original title deeds of his property i.e., sale deed dated 17-12-1997 which covers an extent of Ac.08-55 cents of land in Boyalakinthada village, Devarapalli mandal, Visakhapatnam; that a memorandum of deposit of title deeds dated 03-08-1998 was also executed by the husband of the fifth respondent in favour of the first respondent-bank and the loan was sanctioned on 29-08-1998 by the first respondent bank. It is further averred that the borrower had repaid only a sum of Rs.2,25,000-00 and committed default in payment of balance loan amount and interest; that on 25-05-2001, the fourth respondent attached the mortgaged property by service of notice of attachment in Form No.7 under Rule 52 (11)(d) of the Andhra Pradesh Co-operative Societies Rules,1964 in E.P.No.2276/2000-01 and a notice to this effect was served on borrower on 25-05-2001 itself. It is further averred that when first respondent sought to auction the mortgaged property on 13-08-2002 by publishing proclamation of sale in Eenadu Telugu daily on 11-08-2002, the petitioner filed W.P.No. 14746 of 2002 questioning the said auction notice and he later withdrew the writ petition. It is also averred that the petitioner again filed the present writ petition when the property was sought to be sold on 10-12-2002 and that the amounts due from the borrower stood at Rs.9.80 lakhs and as on today, the outstanding amounts are to a tune of Rs.12,00,000-00. It is further averred that the sale of property in petitioner's favour took place on 24-10-2002 i.e., after the attachment of property made by fourth respondent, is void and it confers no title on the petitioner.

Heard Sri Shiva Prasad, learned counsel appearing for the petitioner and Sri M.S. Ramachandra Rao, learned counsel for the

respondent Nos. 1 and 2.

It is not in dispute that the property in question was initially mortgaged by deposit of title deeds on 03-08-1998 in connection with the sanctioning of loan in favour of the husband of the fifth respondent and it is also not in dispute that the said property was attached by the fourth respondent on 25-05-2001. The petitioner on his own showing has got the sale deed registered in his favour on 24-10-2002. From the aforementioned facts, it is clear that by the time the petitioner got the sale deed executed in his favour, the property was not only encumbered, but also attached by a competent authority under the provisions of the A.P. Co-operative Societies Act, 1964 and the Rules made thereunder. Therefore, no title to the petitioner had been passed by virtue of the registered sale deed dated 24-10-2002. The contention of the learned counsel for the petitioner that it was the duty of the first respondent-bank to inform the concerned Registrar's office about the encumbrance can be mentioned only to be rejected. Except making a vague submission in paragraph No.7 of the affidavit filed in support of the writ petition that the petitioner verified with the office of the Registrar and also had taken an encumbrance certificate showing no encumbrances, the petitioner has neither given the details as to when he made such enquiries nor he filed a copy of the alleged encumbrance certificate. The petitioner has also not relied upon any statutory provision under which the duty is cast upon the first respondent-bank to inform the Registrar's office about the encumbrances. All these contentions, in my view, are raised only in order to stall the sale proceedings, which the respondents are legitimately entitled to carry out.

For the aforementioned reasons, the writ petition is devoid of merits and substance and therefore the writ petition is dismissed. No costs.

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C.V.NAGARJUNA REDDY, J

Dated: 25-07-2007.
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